IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12/10/2004

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ
AND
THE HONOURABLE MR.JUSTICE T.V.MASILAMANI

Criminal Appeal No.274 of 2002

Aruchamy .. Appellant/Accused

-Vs-

State rep. by
Inspector of Police,
Udumalpet Police Station.
(Cr.No.793/2000) .. Respondent/Appellant

Criminal Appeal against the judgment dated 30.11.2001 rendered in S.C.No.281 of 2001 on the file of I Additional Sessions Judge, Coimbatore.

!For Appellant : Mr.C.D.Johnson
For Respondent : Mr.E.Raja,
Addl.Public Prosecutor.

^For Respondent: ---

:J U D G M E N T

(Judgment of the Court was delivered by V.KANAGARAJ,J)
This Criminal Appeal has been preferred against the judgment dated 3 0.11.2001 rendered in S.C.No. 86 of 2001 by the Court of II Additional Sessions Judge, Coimbatore, thereby convicting the appellant who was the sole accused before the trial Court for the commission of offence punishable under Section 302 IPC and sentencing him for life imprisonment further ordering to pay a fine of Rs.1000/- in default to undergo rigourous imprisonment for 3 months.

2. The charge as framed against the appellant/accused before the trial Court was that the appellant/accused and the deceased Selvam @ Selvaraj were the residents of Marulpatti Village, Udumalpet Taluk; that the

appellant/accused and the cousin of the deceased Selvam @ Selvaraj namely Nagammal were having illicit intimacy, which was objected to by the deceased Selvam @ Selvaraj, resulting in a panchayat held 25 days prior to the date of occurrence and during the panchayat, following the wordy altercations in between the appellant and the deceased Selvam @ Selvaraj, the appellant/accused was assaulted by the deceased, as a result of which the appellant/accused developed enmity towards the deceased.

3. The further charge was that on 29.12.2000 at about 5.00 p.m. while the deceased Selvam @ Selvaraj and the witness Subramaniam were sitting and talking on the road side near the place called Salai Goundachi Thottam at Marulpatti Village, the appellant/accused under the pretext of conversing with them and with an intention of causing death of the Selvam @ Selvaraj took out an Aruval and cut the right side neck of the said Sevlam @ Selvaraj indiscriminately, as a result of which the said Selvam @ Selvaraj died of

shock and haemorrhage on the spot and hence the charge for the commission of offence punishable under Section 302 I.P.C. against the appellant/accused before the trial Court.

4. Based on the above charge, following all the procedural aspects necessary in the circumstances of the case for the conduct of trial, the Court of I Additional Sessions Judge, Coimbatore, having conducted a full trial into the facts and circumstances involved in the whole case of the prosecution in which the prosecution, whose burden it is to prove the offence against the appellant/accused beyond all reasonable doubts as required under law has examined 16 witnesses as P. Ws.1 to 16 for oral evidence, has marked 15 documents as Exs.P.1 to 15 , for documentary evidence, further marking 13 Material Objects as M.Os.1 to 13. On the part of the appellant/accused neither any witness has been examined for oral evidence nor any document has been marked for documentary evidence. The Court of I Additi onal Sessions Judge, Coimbatore, having considered all the materials made available before it and having appreciated the evidence placed on record has ultimately arrived at the conclusion to hold the appellant/accused guilty of the offence under Section 302 IPC and has imposed the sentence of life imprisonment, besides imposing a fine of Rs.1000/-, in default to undergo R.I. for three months. The fine is reported to have been paid.

5. It is this judgment of conviction and sentence passed by the Court of I Additional Sessions Judge, Coimbatore, as per its judgment dated 30.11.2001 which is under challenge before this Court in the above Criminal Appeal.

6. Though the appeal has been preferred by the appellant on certain grounds, the appellant/accused is not challenging the guilt of the commission of offence for causing the death of the deceased Selvam @ Selvaraj. In fact, even in the plea of the accused at the time of framing charge and at the time of examining him under Section 313 of Cr. P.C. the appellant/accused has admitted the guilt of the commission of offence at the time, place and in the manner alleged on the part of the prosecution, but would set up a defence that only because the deceased challenged the chastity of the wife of the

appellant/accused stating that he would see that the appellant's wife was molested with the help of somebody, he got enraged and committed the offence. This defence has been taken on the part of the appellant/accused only at the fag end of the trial i.e. while examining him under Section 313 of Cr.P.C. and never before at any point of time particularly during the entire trial and hence at this stage itself it could be clarified that this defence has been taken as a result of afterthought.

7. Moreover, since at the fag end of the trial i.e. while examining the appellant/accused under Section 313 of Cr.P.C. after the entire examination of the witnesses and marking the documents are over and when the case was awaiting the arguments and decision, there was no opportunity for the prosecution to testify the validity or veracity of this statement made by the appellant/accused. Therefore, for this Court to reasonably arrive at the conclusion that only because of such utterances made on the part of the deceased at any point of time prior to the occurrence the appellant/accused had committed the murder in the manner alleged by the prosecution, absolutely no evidence comes-forth right from the beginning, till the end of the trial, much less in the form of even suggestions. Even to prove that such utterances were made on the part of the deceased challenging the chastity of the appellant's wife, in spite of the best efforts made on the part of this Court, it is not able to find any iota of evidence for such utterances having been made on the part of the deceased ever prior to the occurrence and therefore, neither the statement given by the appellant during the examination under Section 313 Cr.P.C. could be held true nor consequently this Court could held the utterances alleged to serve as a provocative one and therefore, based on this defence taken on the part of the appellant/accused during the examination under Section 313 Cr.P.C. no conclusions could be arrived at by this Court. In fact, the trial Court itself has, in paragraph 11 of its judgment, vividly dealt with this aspect and has ruled out the possibility to bring the case under any of the exceptions given under Section 300 I.P. C. and hence the question of converting the offence of 'murder' into an offence of 'culpable homicide not amounting to murder' cannot be done in a case of such nature and in the wake of the admission of the guilt of the offence charged and for lack of evidence for bringing the case from Section 302 I.P.C. to Section 304 either under Part I or Part II and therefore this Court, in these circumstances, is left with no choice but to confirm the judgment of the lower Court since the only stand taken and argued on the part of the appellant/accused is lacking materials and legal provisions to provide for such a conversion and hence the following judgment:

In result,

(i) the above Criminal Appeal fails and the same is dismissed;
(ii) the conviction and sentence, passed by the Court of I Additional Sessions Judge, Coimbatore as per its Judgment dated 30.11.2001 made in S.C.No.86 of 2001, is confirmed.

Index:Yes
Internet:Yes

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To

1. The I Additional Sessions Judge cum Chief Judicial Magistrate,
Coimbatore.
2. The I Additional Sessions Judge cum Chief Judicial Magistrate,
Coimbatore, through the Prl.Sessions Judge, Coimbatore.
3. The Inspector of Police, Udumalpet Police Station, Udumalpet.
4. The Superintendent, Central Prison, Coimbatore.
5. The District Collector, Coimbatore.
6. The Director General of Police, Chennai-4.
7. The Public Prosecutor, Chennai.